

Response to Office Action
SN 10/772,973
Customer No. 33354

REMARKS

A. Status of the Claims

Claims 1-33 are pending. Claims 1-3, 7-9, 11-13, 30 and 33 are cancelled herein. Claims 4, 5, 6, 10, 14, 15, 16, 29 and 32 are amended herein.

B. Final Office Action Should Have Been Withdrawn

For a final rejection to be proper, a clear issue should be developed between the examiner and applicants. MPEP §706.07. However, the Examiner took several actions after final rejection that raised new substantive issues, some of which are inconsistent with each other. For example, the Advisory Action states that Applicant's reply overcame the rejections for claims 1-5, and yet claims 1-3 stand rejected. Applicants believe that the final rejection should have been withdrawn in light of the Examiner's actions to allow a clear issue to be developed. To expedite patent issuance, Applicants choose not to address the final rejection at this time, but reserve the right to traverse the final rejection in subsequent replies, if any are necessary.

C. Enter New Claim Amendments to Place Application in Form for Allowance

In the Advisory action dated January 25, 2006 ("Advisory Action"), the Examiner remarked that the proposed amendments filed after the final rejection will not be entered because they raise new issues that would require further consideration.

Consequently, the status of the claims now is the same as that in the Final Office Action, namely:

Claims(s) allowed: 20-29 and 31.

Claim(s) objected to: 4-6, 10 and 14-19.

Claim(s) rejected: 1-3, 7-9, 11-13, 30, 32 and 33.

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The Examiner may consider claim amendments and arguments after final rejection, if such amendment will place the application in condition for allowance or better form for appeal. MPEP 714.12. Therefore, as explained in more detail below, Applicants have amended claims 4-6, 10 and 14-19 to overcome the objections stated in the Final Office Action and have amended claim 32 to overcome the §112 rejection stated in the Final Office Action. Applicants have cancelled all other objected or rejected claims, namely 1-3, 7-9, 11-13, 30 and 33. Applicants believe the application is now in form for allowance.

1. Allowable Over Rejected Base Claim

In the Final Office Action, the Examiner objected to claims 4-6, 10, and 14-19 as being dependent on a rejected base claim, but stated they would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Therefore, Applicants have amended claims 4 and 10 to be in independent form and amended claims 5-6 and 14-16 to depend from their respective Independent claim, so that all of the claims objected to now include all of the limitations of the base claim and any intervening claims. Applicants believe these claims are in form for allowance and respectfully request that the Examiner withdraw the objection.

2. Allowable if Antecedent Basis Corrected

The Examiner rejected claims 30 and 32 for lacking antecedent basis under §112, but stated that they would be allowable if rewritten to correct the antecedent basis and include all of the limitations of the base claim and any intervening claims. Therefore, Applicants have cancelled claim 30 and amended claim 32 to correct the antecedent basis. Applicants believe claim 32 is in form for allowance and respectfully requests that the Examiner withdraw the rejection.

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3. Correction of Antecedent Basis

Claim 29 has been allowed, but Applicants notice that it had an antecedent basis problem. Applicants amend claim 29 herein to correct the antecedent basis of "the pulse frequency" to "a pulse frequency."

D. Application of Kreitzman

In the Advisory Action and its accompanying Interview Summary, the Examiner references US Patent 6,431,731 issued to Krietzman. Applicants' attorneys disagree with Parts I and II of the examiner's summary and reserve the right to traverse that summary if necessary. However, claims 7 and 33 to which Krietzman was applied have been cancelled herein and are therefore no longer at issue.

E. Provisional Double Patenting Rejection

In the first office action dated June 17, 2005, the Examiner provisionally rejected claims 1, 3-7, 9-15 and 33 for obviousness-type double patenting over claims 1, 2, 13, 14, 16-18, 23, 26, 27 and 29 of co-pending Application No. 10/612,504. Of those provisionally-rejected claims, claims 4-6, 10, and 14-15 are still at issue. Application 10/612,504 has not yet matured into a patent, and therefore Applicants maintain their position that they are not prepared to file a terminal disclaimer or argue against the rejection until it issues. Applicants will formally address this issue if application 10/612,504 issues as a patent before this application.

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CONCLUSION

Applicants respectfully submit that all the objections and rejections have been traversed, and that the application is in form for issuance. If the Examiner has any suggestions or comments that would place the application in even better form for allowance, he is invited to call Applicants' representative Sandra Etherton at 602-681-3331.

Respectfully submitted,



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Dated

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